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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Fifty-Six Hope Road Music, Ltd., a
Bahamian corporation; and Zion
Rootswear, LLC, a Florida limited liability
company

Plaintiffs,

v.

A.V.E.L.A., Inc., a Nevada corporation; X
ONE X Movie Archive, Inc., a Nevada
corporation; Jem Sportswear, a California
corporation; Central Mills, Inc. (Freeze), a
New York corporation; and Leo Valencia,
an individual;

Defendants.

Case No. 2:08-cv-00105-PMP-GWF

**AMENDED COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF**

- (1) Unfair Competition under
15 U.S.C. § 125(a)
- (2) Trademark Infringement under
15 U.S.C. § 1114
- (3) Common Law Trademark Infringement
- (4) Unauthorized Commercial Use of Right
of Publicity under NRS 597.770
- (5) Intentional Interference with
Prospective Economic Advantage

For their amended complaint against Defendants, Plaintiffs Fifty-Six Hope Road Music, Ltd ("Hope Road") and Zion Rootswear, LLC ("Rootswear") (collectively "Plaintiffs") complain and allege as follows:

NATURE OF ACTION

This is an action for unfair competition and trademark infringement under federal statutes, with pendent claims for common law trademark infringement and unauthorized commercial use of right of publicity. Plaintiffs seek damages, attorneys' fees, costs, and preliminary and permanent injunctive relief.

JURISDICTION

1
2 1. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C.
3 §§1331 and 1338(a). This Court has supplemental jurisdiction over the Plaintiffs' state law
4 claims pursuant to 28 U.S.C. § 1367(a).

5 2. This Court has personal jurisdiction over Defendant A.V.E.L.A., Inc. ("Avela")
6 based upon the following: (a) Avela is a Nevada corporation with a principal place of
7 business in Reno, Nevada; (b) Avela has committed tortious acts within the State of
8 Nevada that it knew of should have known would cause injury to Plaintiffs in the State of
9 Nevada; and (c) Avela has designed, marketed, and sold infringing merchandise to retailers
10 who are offering such merchandise to consumers in the State of Nevada.

11 3. This Court has personal jurisdiction over Defendant X ONE X Movie Archive,
12 Inc. ("X ONE X") based upon the following: (a) X ONE X is a Nevada corporation with a
13 principal place of business in Reno, Nevada; (b) X ONE X has committed tortious acts
14 within the State of Nevada that it knew of should have known would cause injury to
15 Plaintiffs in the State of Nevada; and (c) X ONE X has designed, marketed, and sold
16 infringing merchandise to retailers who are offering such merchandise to consumers in the
17 State of Nevada.

18 4. This Court has personal jurisdiction over Defendant Jem Sportswear ("Jem")
19 based upon the following: (a) Jem is a California corporation with systematic and
20 continuous business related contacts within the State of Nevada; (b) Jem has committed
21 tortious acts within the State of Nevada that it knew of should have known would cause
22 injury to Plaintiffs in the State of Nevada; and (c) Jem has designed, marketed, and sold
23 infringing merchandise to retailers who are offering such merchandise to consumers in the
24 State of Nevada.

25 5. This Court has personal jurisdiction over Defendant Freeze (a division of
26 Central Mills, Inc.) ("Freeze") based upon the following: (a) Freeze is a New York
27 corporation with systematic and continuous business related contacts within the State of
28 Nevada; (b) Freeze has committed tortious acts within the State of Nevada that it knew of

1 should have known would cause injury to Plaintiffs in the State of Nevada; and (c) Freeze
2 has designed, marketed, and sold infringing merchandise to retailers who are offering such
3 merchandise to consumers in the State of Nevada.

4 6. This Court has personal jurisdiction over Defendant Leo Valencia ("Valencia")
5 based upon the following: (a) Valencia is an officer, employee, director, shareholder,
6 authorized agent, member, manager, and/or alter ego of Avela; (b) Valencia has committed
7 tortious acts within the State of Nevada that he knew of should have known would cause
8 injury to Plaintiffs in the State of Nevada; and (c) Valencia has designed, marketed, and
9 sold infringing merchandise to retailers who are offering such merchandise to consumers
10 which benefit the corporation in the State of Nevada.

11 7. Venue is proper in the United States District Court for the District of Nevada
12 under 28 U.S.C. § 1391(b) and (c). Venue lies in the unofficial Southern Division of this
13 Court.

14 PARTIES

15 8. Plaintiff Hope Road is a Bahamian corporation with a principal place of
16 business at Aquamarine House, Cable Beach, Nassau, Bahamas.

17 9. Plaintiff Rootswear is a Florida limited liability company with a principal place
18 of business at 465 Tresca Road, Jacksonville, Florida.

19 10. Upon information and belief, Defendant Avela is a Nevada corporation with a
20 principal place of business at 1135 Terminal Way, Suite 209, Reno, NV 89502.

21 11. Upon information and belief, Defendant X ONE X is a Nevada corporation
22 with a principal place of business at 1135 Terminal Way, Suite 209, Reno, NV 89502.

23 12. Upon information and belief, Defendant Jem is a California corporation with a
24 principal place of business at 459 Park Avenue, San Fernando, CA 91340.

25 13. Upon information and belief, Defendant Freeze is a division of Central Mills,
26 Inc., which is a New York corporation with a principal place of business at 473 Ridge Road,
27 Dayton, NJ 08810.

1 14. Upon information and belief, Defendant Valencia is an individual residing in
2 Reno, Nevada.

3 **ALLEGATIONS COMMON TO ALL COUNTS**

4 15. Hope Road is comprised primarily of the heirs and estate of the late, world-
5 renowned Reggae performer Robert Nesta Marley ("Marley").

6 16. At all times relevant to this action, Hope Road is and has been the owner of
7 intellectual property and publicity rights for Marley (the "Marley Intellectual Property" or
8 "I.P."), including but not limited to:

9 a. Common law rights in the name Bob Marley used in association with music
10 and entertaining and merchandise which promote same.

11 b. U.S. Federal Trademark Registration 2349361 for the mark BOB MARLEY
12 for, *inter alia*, T-shirts, thermal shirts, jackets, hats, caps, sweatshirts, ties and
13 bandanas in International Class 025.

14 c. Nev. Registration for Right of Publicity for Robert Nesta Marley under NRS
15 597.800 (Reg. Vol. 1-89, Jan. 24, 2006)

16 17. At all times relevant to this action, Rootswear was Hope Road's exclusive
17 worldwide licensee for, among other things, T-shirts, jackets, hats, and other clothing and
18 merchandise bearing the Marley Intellectual Property.

19 18. Due to the world-renowned celebrity of Marley during his life and
20 posthumously, the Marley Intellectual Property has become highly distinctive throughout
21 Las Vegas, Nevada, the United States, and internationally.

22 19. Hope Road and Rootswear have spent substantial sums of money in
23 acquiring, advertising, licensing, enforcing, and promoting the Marley Intellectual Property
24 on merchandise and in various forms of media throughout the United States and
25 internationally.

26 20. Upon information and belief, Defendants have been, and continue to be, in
27 the business of designing, manufacturing, marketing, and offering for sale in commerce
28 clothing and other fashion related merchandise.

1 21. Upon information and belief, Defendants have been, and continue to be,
2 designing, manufacturing, marketing, and offering for sale in commerce T-shirts and other
3 fashion-related merchandise bearing the Marley Intellectual Property.

4 22. Upon information and belief, Defendants maintain no rights or claims to
5 ownership of any Marley Intellectual Property, and Defendants have not been granted
6 permission or a license by Hope Road or Rootswear to manufacture, distribute, or sell any
7 product bearing the Marley Intellectual Property.

8 23. The merchandise designed, manufactured, marketed, and/or sold by
9 Defendants bearing the Marley Intellectual Property are substantially similar to
10 merchandise marketed and sold by Rootswear under Rootswear's exclusive license with
11 Hope Road.

12 24. Upon information and belief Defendants offered, bought and/or sold
13 unauthorized products and merchandise bearing the Marley Intellectual Property to certain
14 vendors displaying infringing merchandise at the at February 2007 MAGIC fashion
15 tradeshow in Las Vegas, Nevada.

16 25. On February 14, 2007, due to Defendants' infringing actions, Hope Road and
17 Rootswear filed a Complaint against Avela, Valencia, Charles Friedman ("Friedman") and
18 Fame Jeans, Inc. ("Fame") (collectively the "2007 Defendants") for Trademark Infringement
19 and Unauthorized Use of Rights of Publicity in U.S. Federal Court, District of Nevada (Case
20 No. 2:07-cv-194, the "2007 Action").

21 26. On February 14, 2007, in conjunction with the 2007 Action, Hope Road and
22 Rootswear filed an application for temporary restraining order and seizure order, and
23 moved for a preliminary injunction against the 2007 Defendants.

24 27. On February 15, 2007, the Court in the 2007 action granted a temporary
25 restraining order and seizure order against the 2007 Defendants based on their
26 unauthorized marketing and sales of merchandise infringing the Marley Intellectual
27 Property.

1 28. On February 21, 2007 the Parties to the 2007 Action filed a stipulation to
2 extend the temporary restraining order against the 2007 Defendants and postpone the
3 preliminary injunction hearing while the Parties explored a potential settlement of the 2007
4 Action.

5 29. In August of 2007, Hope Road and Rootswear entered into a settlement
6 agreement with Friedman and Fame resolving all claims against Friedman and Fame in the
7 2007 Action.

8 30. Hope Road and Rootswear were unable to reach a successful settlement of
9 the 2007 Action with Defendants Avela and Valencia.

10 31. On November 29, 2007, the 2007 Action was dismissed without prejudice.

11 32. On or about December 20, 2007, representatives from Hope Road and
12 Rootswear discovered T-shirts similar to the infringing merchandise at issue in the 2007
13 Action being sold at Target retail stores ("Target") bearing the Marley Intellectual Property.

14 33. Upon information and belief, Defendants have been, and continue to be,
15 designing, manufacturing, distributing, buying and/or selling infringing clothing and
16 merchandise bearing the Marley Intellectual Property to various retailers, including but not
17 limited to Target (the "Infringing Merchandise").

18 34. Defendants actions in manufacturing, distributing, buying and/or selling the
19 Infringing Merchandise have caused, and continues to cause, confusion among consumers
20 who are led to believe that the Infringing Merchandise is authentic and licensed Marley
21 merchandise, when in fact it is not.

22 35. Based on, among other things, the allegations in the 2007 Action, the terms of
23 the corresponding temporary restraining order, and the various demands from Hope Road
24 and Rootswear, Defendants are fully aware that they lack the authority or license to design,
25 manufacture, distribute, sell, exhibit, or market the Infringing Merchandise.

26 36. By designing, manufacturing, distributing, buying and/or selling the Infringing
27 Merchandise, Defendants were and are attempting to trade on the goodwill established by
28 Hope Road and Rootswear in the Marley Intellectual Property.

1 37. By designing, manufacturing, distributing, buying and/or selling the Infringing
2 Merchandise, Defendants were and are attempting to create an association between the
3 Infringing Merchandise and the authorized Marley merchandise sold and licensed through
4 Hope Road and Rootswear.

5 38. Upon information and belief, Defendants manufactured, distributed, bought
6 and/or sold the Infringing Merchandise with the bad faith intent to profit from the name and
7 likeness of Robert Nesta Marley and the associated and registered Rights of Publicity
8 owned by Hope Road.

9 39. Upon information and belief, Defendants' continued design, manufacture,
10 buying, sale, distribution, exhibition, and/or marketing of the Infringing Merchandise
11 constitutes federal and common law trademark infringement, unfair competition,
12 unauthorized use of rights of publicity, and intentional interference with prospective
13 economic advantage.

14 40. Upon information and belief, Defendants did not believe or have reasonable
15 grounds to believe that the design, marketing, distribution, buying, or sale of the Infringing
16 Merchandise was a fair use or otherwise lawful.

17 **FIRST CLAIM FOR RELIEF**
18 (Trademark Infringement under
 the Lanham Act, 15 U.S.C. § 1114)

19 41. Plaintiffs incorporate the allegations in the preceding paragraphs as if fully set
20 forth herein.

21 42. Defendants have used and/or is using in commerce merchandise bearing the
22 Marley Intellectual Property, and, thus is confusingly similar to the BOB MARLEY federally
23 registered trademark (the "BOB MARLEY Mark").

24 43. Defendants' use in commerce of the BOB MARLEY Mark, constitutes a
25 reproduction, copying, counterfeiting, and colorable imitation of Plaintiffs' trademark in a
26 manner that is likely to cause confusion or mistake or is likely to deceive consumers.

27 44. By using Plaintiffs' BOB MARLEY Mark with the knowledge that Plaintiffs own
28 or have exclusive and enforceable licenses to use the BOB MARLEY Mark in Las Vegas,

1 across the United States, and around the world, Defendants have intended to cause
2 confusion, cause mistake, or deceive consumers.

3 45. Defendants are using a mark identical to Plaintiffs' BOB MARLEY Mark in
4 connection with the manufacture, distribution, purchase and sale of products in a manner
5 that is likely to cause confusion, or to cause mistake, or to deceive consumers as to
6 affiliation, connection, or association with Plaintiffs or as to the origin, sponsorship, or
7 approval of Defendants' products and commercial activities by Plaintiffs.

8 46. Defendants' use of the BOB MARLEY Mark has created a likelihood of
9 confusion among consumers who may falsely believe that Defendants' products are
10 associated with Plaintiffs' genuine merchandise bearing the Marley Intellectual Property or
11 that Plaintiffs sponsor or approve of Defendants' products or commercial activities.

12 47. As a direct and proximate result of Defendants' infringement, Plaintiffs have
13 suffered, and will continue to suffer, monetary loss and irreparable injury to their business,
14 reputation, and goodwill.

15 **SECOND CLAIM FOR RELIEF**
16 (Unfair Competition under the
Lanham Act, 15 U.S.C. § 1125(a))

17 48. Plaintiffs incorporate the allegations in the preceding paragraphs as if fully set
18 forth herein.

19 49. Defendants' unauthorized use in commerce of the Marley Intellectual Property
20 in connection with Defendants clothing and fashion related merchandise constitutes a false
21 designation of origin and/or a false or misleading description or representation of fact,
22 which is likely to cause confusion, cause mistake, or deceive as to affiliation, connection, or
23 association with Plaintiffs, or as to the origin, sponsorship, or approval of Defendants'
24 products or commercial activities by Plaintiffs.

25 50. Defendants' use in commerce of the Marley Intellectual Property with the
26 knowledge that Plaintiffs own the exclusive right to the commercial use of the Marley
27 Intellectual Property, constitutes intentional conduct by Defendants to make false
28

1 designations of origin and false descriptions about Defendants' products and commercial
2 activities.

3 51. As a direct and proximate result of such unfair competition, Plaintiffs have
4 suffered, and will continue to suffer, monetary loss and irreparable injury to their business,
5 reputation, and goodwill.

6 **THIRD CLAIM FOR RELIEF**
7 (Common Law Trademark Infringement)

8 52. Plaintiffs incorporate the allegations in the preceding paragraphs as if fully set
9 forth herein.

10 53. By virtue of having used and continuing to use the BOB MARLEY Mark, Hope
11 Road and Rootswear have acquired common law rights in that mark.

12 54. Defendants' use of the BOB MARLEY Mark infringes Plaintiffs' common law
13 rights in its trademark, and this use is likely to cause confusion, mistake, or deception
14 among consumers, who will believe that Defendants' products, clothing, and fashion related
15 merchandise are affiliated with, or endorsed by Plaintiffs when, in fact, they are not.

16 55. As a direct and proximate result of Defendants' infringement of Plaintiffs'
17 common law trademark rights under Nevada and other common law, Plaintiffs have
18 suffered, and will continue to suffer, monetary damages and irreparable injury to their
19 business, reputation, and goodwill.

20 **FOURTH CLAIM FOR RELIEF**
21 (Unauthorized Commercial Use of Right of Publicity
under N.R.S. § 597.770 *et seq.*)

22 56. Plaintiffs incorporate the allegations in the preceding paragraphs as if fully set
23 forth herein.

24 57. Throughout his life, Marley, as a world-renowned reggae musician and
25 performer, acquired valuable goodwill and commercial value in his persona including but
26 not limited to his name, voice, signature, photograph, and likeness in Nevada, throughout
27 the United States, and internationally.

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58. Under Nevada law, the goodwill and commercial value in Marley's name, voice, signature, photograph, likeness, and his Rights of Publicity creates an absolute, incorporeal, and transferable property right in such goodwill and commercial value.

59. On January 24, 2006, as successor-in-interest to the Marley Intellectual Property and as heirs to the estate of Robert Nesta Marley, Hope Road registered its claim to the rights of publicity in Robert Nesta Marley (the "Marley Rights of Publicity") with the Nevada Secretary of State pursuant to NRS 597.800.

60. Defendants have used in commerce, and continue to use in commerce, the name, voice, signature, photograph, and/or likeness of Marley on merchandise, in media, and on marketing materials, without the consent of Hope Road.

61. As a direct and proximate result of Defendants' infringement of the Marley Rights of Publicity under NRS 597.800, Plaintiffs have suffered, and will continue to suffer, monetary damages and irreparable injury to their business, reputation, and goodwill.

62. Upon information and belief, Defendants were fully aware that Hope Road, as the successor-in-interest to the Marley Rights of Publicity, was the only entity that could consent to the commercial use of Marley's name, voice, signature, photograph, and/or likeness, and that Defendants had not obtained such consent from Hope Road.

63. Due to Defendants' knowing infringement of the Marley Rights of Publicity, Plaintiffs are entitled to an award of exemplary and/or punitive damages.

FIFTH CLAIM FOR RELIEF
 (Intentional Interference with
 Prospective Economic Advantage)

64. Plaintiffs incorporate the allegations in the preceding paragraphs as if fully set forth herein.

65. Upon information and belief, at the time Defendants adopted and began using the Marley Intellectual Property and since that time, Defendants knew and have known that Plaintiffs are the sole entities with the right and authority to use the Marley Intellectual Property in commerce.

66. Upon information and belief, Defendants committed acts intended or

1 designed to disrupt Plaintiffs' prospective economic advantage arising from advertising
2 and/or providing products bearing the Marley Intellectual Property.

3 67. Defendants' actions have disrupted or are intended to disrupt Plaintiffs'
4 business by, among other things, diverting customers away from genuine authorized
5 products bearing the Marley Intellectual Property to Defendants' unauthorized products
6 bearing the same.

7 68. Defendants have no legal right, privilege or justification for their conduct.

8 69. As a direct and proximate result of Defendants' intentional interference with
9 Plaintiffs' prospective economic advantage, Plaintiffs have suffered, and will continue to
10 suffer, monetary damages and irreparable injury.

11 70. Based on the intentional, willful and malicious nature of Defendants' actions,
12 Plaintiffs are entitled to recover exemplary damages and reasonable attorneys' fees and
13 costs incurred in connection with this action.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Hope Road and Rootswear respectfully pray that the Court grant the
16 following relief:

17 A. A preliminary and permanent injunction prohibiting Defendants, their
18 respective officers, agents, servants, employees and/or all persons acting in concert or
19 participation with them, from: (1) using the BOB MARLEY Mark, alone or in combination
20 with any other letters, words, letter strings, phrases or designs, in commerce or in
21 connection with any business or for any other purpose (including, but not limited to, clothing
22 and fashion related merchandise); and (2) using Marley's name, voice, signature,
23 photograph, or likeness in commerce or in connection with any business or for any other
24 purpose (including, but not limited to, clothing and fashion related merchandise);

25 B. A preliminary and permanent injunction requiring any known and current
26 retailers of the Infringing Merchandise to transfer any and all such merchandise to Plaintiffs;

27 C. An award of compensatory, consequential, statutory, and punitive damages to
28 Hope Road and Rootswear in an amount to be determined at trial;

1 D. An award of interest, costs and attorneys' fees incurred by Hope Road and
2 Rootswear in prosecuting this action; and

3 E. All other relief to which Hope Road and Rootswear are entitled.

4 DATED: December 29, 2008.

5 GREENBERG TRAURIG, LLP

6 /s/ Tyler R. Andrews

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